

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mediacom Illinois LLC)	
)	
Mediacom Indiana LLC)	CSR-6749-E
)	
Petition for Determination of)	
Effective Competition in 12 Local)	
Franchise Areas in Illinois and Indiana)	

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 2007

Released: July 25, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Illinois LLC and Mediacom Indiana LLC (“Mediacom”) have filed a petition with the Commission pursuant to 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that its cable television systems serving 12 Illinois and Indiana communities (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”), and are therefore exempt from rate regulation.¹ No oppositions to the petition were filed. We grant the petitions finding that Mediacom is subject to effective competition in all of the Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission’s rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴

¹ 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁵ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Communities are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁸ We find further that Mediacom has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in the Communities by utilizing a Satellite Broadcasting and Communications Association ("SBCA") subscriber tracking report that identified the number of subscribers attributable to the DBS subscribers within the Communities on a Zip+4 zip code basis.⁹ Mediacom asserts that it is the largest MVPD in Grant Park and Momence,

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶¶ 6, 13, 72-73 (2006).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ Mediacom Petition at 7, Exhibits E and F. The exhibits provided by Mediacom did not provide the list of zip codes associated with the SBCA reports. On February 23 2007, the Media Bureau requested additional information from Mediacom regarding its SBCA submissions. *See* Letter to Bruce J. Gluckman, Mediacom Communications Corporation, from Steven A. Broeckaert, Deputy Chief, Policy Division, Media Bureau (February 23, 2007). On March 13, 2007, Mediacom submitted an erratum to its petition with the list of zip codes used by SBCA in preparing its subscriber report. *See* Erratum and Exhibits submitted by James McKnight, Mediacom (March 13, 2007). The Communities did not oppose, or otherwise respond, to Mediacom's erratum.

Illinois.¹⁰ Mediacom states that it cannot determine the largest MVPD in Kouts, La Crosse, Wanatah, Westville and Wheatfield, Indiana because the SBCA aggregates the number of subscribers that the DBS providers have, but it can be determined that the total for two MVPDs other than the largest exceeds 15 percent of the households in these Communities.¹¹

5. Based upon the aggregate DBS subscriber penetration levels, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest, exceeds 15 percent of the households in Grant Park and Momence, Illinois.¹² With regard to the communities of Kouts, La Crosse, Wanatah, Westville, and Wheatfield, Indiana, we are able to conclude that this portion of the test is met by analyzing data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹³ In Kouts, the combined DBS penetration rate is 43.80 percent and Mediacom's penetration rate is 37.02 percent.¹⁴ In La Crosse, the combined DBS penetration rate is 44.34 percent and Mediacom's penetration rate is 19.91 percent.¹⁵ In Wanatah, the combined DBS penetration rate is 42.61 percent and Mediacom's penetration rate is 21.05 percent.¹⁶ In Westville, the combined DBS penetration rate is 32.78 percent and Mediacom's penetration rate is 21.74 percent.¹⁷ In Wheatfield, the combined DBS penetration rate is 31.09 percent and Mediacom's penetration rate is 26.59 percent.¹⁸ Therefore, the second prong of the competing provider test is satisfied with respect to all of the Communities noted above. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to competing provider effective competition.

B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁹ Mediacom

¹⁰ Mediacom Petition at 6. Mediacom states that its subscriber number is an estimate derived from Mediacom's billing system using addresses to which Mediacom provides service. Mediacom Petition at n.20.

¹¹ Mediacom Petition at 7.

¹² Grant Park (172 DBS subscribers ÷ 497 Grant Park households = 34.61%); Momence (428 DBS subscribers ÷ 1,159 Momence households = 36.93%).

¹³ See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁴ Kouts (297 DBS subscribers ÷ 678 Kouts households = 43.80%); (251 Mediacom subscribers ÷ 678 Kouts households = 37.02%).

¹⁵ La Crosse (98 DBS subscribers ÷ 221 La Crosse households = 44.34%); (44 Mediacom subscribers ÷ 221 La Crosse households = 19.91%).

¹⁶ Wanatah (170 DBS subscribers ÷ 399 Wanatah households = 42.61%); (84 Mediacom subscribers ÷ 399 Wanatah households = 21.05%).

¹⁷ Westville (294 DBS subscribers ÷ 897 Westville households = 32.78%); (195 Mediacom subscribers ÷ 897 Westville households = 21.74%).

¹⁸ Wheatfield (83 DBS subscribers ÷ 267 Wheatfield households = 31.09%); (71 Mediacom subscribers ÷ 267 Wheatfield households = 26.59%).

¹⁹ 47b U.S.C. § 543(1)(1)(A).

provided information showing that less than 30 percent of the households within the unincorporated and unnamed areas of Jasper County, Indiana; the unincorporated and unnamed areas of Kankakee County, Illinois; the unincorporated and unnamed areas of Lake County, Indiana; the unincorporated and unnamed areas of Newton County, Indiana; and the unincorporated areas of Porter County commonly known as Malden, Indiana subscribe to their cable services.²⁰ Accordingly, we find that Mediacom has demonstrated the existence of “low penetration” effective competition in the above-noted Communities. Mediacom also submits that the Communities of Wanatah, Westville, and Wheatfield have satisfied the requirements of the low penetration test because their Mediacom subscriber numbers are below 30 percent.²¹ We need not make this finding, however, as these Communities are subject to effective competition under the competing provider test.

III. ORDERING CLAUSE

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Mediacom Illinois, LLC and Mediacom Indiana LLC in the above-named Communities **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic service rates granted to any of the local franchising authorities overseeing Mediacom Illinois and Mediacom Indiana in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority under Section 0.283 of the Commission’s rules.²²

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

²⁰ Mediacom Petition at 8. Jasper (621 Mediacom subscribers ÷ 10,686 Jasper households = 5.81%); Kankakee (212 Mediacom subscribers ÷ 38,182 Kankakee household subscribers = 0.55%); Lake (96 Mediacom subscribers ÷ 181,633 Lake household subscribers = 0.05 %); Newton (384 Mediacom subscribers ÷ 5,340 Newtown households subscribers = 7.19%); Porter (27 Mediacom subscribers ÷ 54,649 Porter households = 0.05%). Mediacom states that for purposes of its petition, the Mediacom subscriber numbers are estimates from Mediacom’s billing system using addresses to which Mediacom provides service. Mediacom Petition at n.20.

²¹ Mediacom did not ask for a finding of low penetration effective competition for La Crosse, Indiana, although its Mediacom subscriber penetration level is 19.91%. However, as noted herein, La Crosse is subject to competing provider effective competition.

²² 47 C.F.R. § 0.283.